

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA (Reading)**

IN RE:

**BRIAN EDWARD BUECKER
A/K/A BRIAN BUECKER**

Debtor

: BK. No. 18-17801-ref

:

: Chapter No. 13

:

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE FOR SECURITIZED
ASSET BACKED RECEIVABLES LLC TRUST
2007-BR3, MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2007-BR3**

Movant

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:

:

v.

:

**BRIAN EDWARD BUECKER
A/K/A BRIAN BUECKER**

:

:

Respondent

:

**OBJECTION OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
FOR SECURITIZED ASSET BACKED RECEIVABLES LLC TRUST 2007-BR3,
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BR3 TO
CONFIRMATION OF THE DEBTOR'S CHAPTER 13 PLAN**

Movant, **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SECURITIZED ASSET BACKED RECEIVABLES LLC TRUST 2007-BR3, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BR3** (hereinafter referred to as "Movant"), by its attorneys Phelan Hallinan Diamond & Jones, LLP hereby objects to confirmation of the Debtor's Chapter 13 Plan as follows:

1. Movant is **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SECURITIZED ASSET BACKED RECEIVABLES LLC TRUST 2007-BR3, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BR3**.

2. Debtor is the owner of the property located at 527 WEST CHESTNUT STREET, LANCASTER, PA 17603.

3. On February 5, 2019, Movant filed Proof of Claim listing pre-petition arrears in the amount of \$350,773.17. A copy of the Proof of Claim is attached hereto as Exhibit "A" and made a part hereof.

4. Debtor's Plan fails to cure the delinquency pursuant to 11 U.S.C. §1322(b)(5).

5. Debtor's Plan currently provides for payment to Movant in the amount of \$0.00. A copy of the Debtor's Plan is attached hereto as Exhibit "B" and made a part hereof.

6. Debtor's Plan provides for the Debtor's pursuit of a loan modification. Debtor's Plan is speculative in nature in that the Plan contemplates curing the arrears through a loan modification that has neither been offered nor approved.

7. Debtor's Amended Plan calls for the sale of the property. There is no documentation to support such a proposal. The proposed sale of the property is speculative in nature.

8. Movant objects to Debtor's Plan as it is severely underfunded. Debtor's Plan should be amended to fully fund the arrears owed to Movant during the term of the Plan rather than rely on speculation that the property will be sold.

9. Movant is opposed to sale of the subject property unless it pays Movant's lien in full, subject to a payoff. Further, if the Debtor seeks to sell the property the Movant demands full post-petition mortgage payments be made while sale is pending.

10. Additionally, Debtor's Plan fails to provide for the full monthly post-petition payment owed to Movant under the terms of the Note and Mortgage. Movant objects to any post-petition payment amount less than 100% of what is required. Accordingly, confirmation of Debtor's proposed Plan should be denied.

WHEREFORE, **DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SECURITIZED ASSET BACKED RECEIVABLES LLC TRUST 2007-BR3, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-BR3** respectfully requests that this Honorable Court deny confirmation of the Debtor's Chapter 13 Plan.

Respectfully Submitted,

/s/ Robert J. Davidow, Esquire

Robert J. Davidow, Esq., Id. No.321821

Phelan Hallinan Diamond & Jones, LLP

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Dated: February 13, 2019

Exhibit “B”

L.B.F. 3015.1-1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA

In re: Case No.: 18-17801 -REF
BRIAN EDWARD BUECKER Chapter: 13

Debtor(s)

Chapter 13 Plan

☒ ORIGINAL

☐

Date: 12/12/2018

THE DEBTOR HAS FILED FOR RELIEF UNDER
CHAPTER 13 OF THE BANKRUPTCY CODE

YOUR RIGHTS WILL BE AFFECTED

You should have received from the court a separate Notice of the Hearing on Confirmation of Plan, which contains the date of the confirmation hearing on the Plan proposed by the Debtor. This document is the actual Plan proposed by the Debtor to adjust debts. You should read these papers carefully and discuss them with your attorney. **ANYONE WHO WISHES TO OPPOSE ANY PROVISION OF THIS PLAN MUST FILE A WRITTEN OBJECTION** in accordance with Bankruptcy Rule 3015 and Local Rule 3015-5. **This Plan may be confirmed and become binding, unless a written objection is filed.**

IN ORDER TO RECEIVE A DISTRIBUTION UNDER THE PLAN, YOU
MUST FILE A PROOF OF CLAIM BY THE DEADLINE STATED IN THE
NOTICE OF MEETING OF CREDITORS.

Part 1: Bankruptcy Rule 3015.1 Disclosures

- ☐ Plan contains non-standard or additional provisions – see Part 9
☐ Plan limits the amount of secured claim(s) based on value of collateral
☐ Plan avoids a security interest or lien

Part 2: Payment and Length of Plan

§ 2(a)(1) Initial Plan:

Total Base Amount to be paid to the Chapter 13 Trustee ("Trustee") \$ 60,000.00

Debtor shall pay the Trustee \$ 1000 per month for 60 months; and

Debtor shall pay the Trustee \$ per month for months.

- ☐ Other changes in the scheduled plan payment are set forth in § 2(d)

§ 2(a)(2) Amended Plan:

Total Base Amount to be paid to the Chapter 13 Trustee ("Trustee") \$ 0.00

The Plan payments by Debtor shall consists of the total amount previously paid (\$) added to the new monthly Plan payments in the amount of \$ beginning (date) for months.

- ☐ Other changes in the scheduled plan payments are set forth in § 2(d)

Part 4: Secured Claims

§ 4(a) Curing Default and Maintaining Payments

- ☒ **None.** If "None" is checked, the rest of § 4(a) need not be completed.
- ☐ The Trustee shall distribute an amount sufficient to pay allowed claims for prepetition arrearages; and, Debtor shall pay directly to creditor monthly obligations falling due after the bankruptcy filing.

Creditor	Description of Secured Property and Address, if real property	Regular Monthly Payment to be paid directly to creditor by Debtor	Estimated Arrearage	Interest Rate on Arrearage, if applicable(%)	Amount to be Paid to Creditor by the Trustee

§ 4(b) Allowed Secured Claims to be Paid in Full: Based on Proof of Claim or Pre-Confirmation Determination of the Amount, Extent or Validity of the Claim

- ☒ **None.** If "None" is checked, the rest of § 4(b) need not be completed.

(1) Allowed secured claims listed below shall be paid in full and their liens retained until completion of payments under the plan.

(2) If necessary, a motion, objection and/or adversary proceeding, as appropriate, will be filed to determine the amount, extent or validity of the allowed secured claim and the court will make its determination prior to the confirmation hearing.

(3) Any amounts determined to be allowed unsecured claims will be treated either: (A) as a general unsecured claim under Part 5 of the Plan or (B) as a priority claim under Part 3, as determined by the court.

(4) In addition to payment of the allowed secured claim, "present value" interest pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) will be paid at the rate and in the amount listed below. If the claimant included a different interest rate or amount for "present value" interest in its proof of claim, the court will determine the present value interest rate and amount at the confirmation hearing.

(5) Upon completion of the Plan, payments made under this section satisfy the allowed secured claim and release the corresponding lien.

Name of Creditor	Description of Secured Property and Address, if real property	Allowed Secured Claim	Present Value Interest Rate	Dollar Amount of Present Value Interest	Total Amount to be paid

§ 4(c) Allowed secured claims to be paid in full that are excluded from 11 U.S.C. § 506

☒ **None.** If "None" is checked, the rest of § 4(c) need not be completed.

The claims below were either (1) incurred within 910 days before the petition date and secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor(s), or (2) incurred within 1 year of the petition date and secured by a purchase money security interest in any other thing of value.

(1) The allowed secured claims listed below shall be paid in full and their liens retained until completion of payments under the plan.

(2) In addition to payment of the allowed secured claim, "present value" interest pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii) will be paid at the rate and in the amount listed below. If the claimant included a different interest rate or amount for "present value" interest in its proof of claim, the court will determine the present value interest rate and amount at the confirmation hearing.

Name of Creditor	Collateral	Amount of Claim	Present Value Interest	Estimated total payments
_____	_____	_____	_____ %	\$ _____
_____	_____	_____	_____ %	\$ _____

§ 4(d) Surrender

☒ **None.** If "None" is checked, the rest of § 4(d) need not be completed.

(1) Debtor elects to surrender the secured property listed below that secures the creditor's claim.

(2) The automatic stay under 11 U.S.C. § 362(a) with respect to the secured property terminates upon confirmation of the Plan.

(3) The Trustee shall make no payments to the creditors listed below on their secured claims.

Creditor	Secured Property

Part 5: Unsecured Claims

§ 5(a) Specifically Classified Allowed Unsecured Non-Priority Claims

☒ **None.** If "None" is checked, the rest of § 5(a) need not be completed.

Creditor	Basis for Separate Classification	Treatment	Amount of Claim	Amount to be paid

§ 5(b) All Other Timely Filed, Allowed General Unsecured Claims

(1) Liquidation Test (*check one box*)

- ☒ All Debtor(s) property is claimed as exempt.
☐ Debtor(s) has non-exempt property valued at \$ _____ for purposes of § 1325(a)(4)

(2) Funding: § 5(b) claims to be paid as follows (*check one box*):

- ☒ Pro rata
☐ 100%
☐ Other (Describe)

Part 6: Executory Contracts & Unexpired Leases

☒ **None.** If "None" is checked, the rest of § 6 need not be completed.

Creditor	Nature of Contract or Lease	Treatment by Debtor Pursuant to §365(b)

Part 7: Other Provisions

§ 7(a) General Principles Applicable to The Plan

(1) Vesting of Property of the Estate (*check one box*)

- ☒ Upon confirmation
☐ Upon discharge

(2) Unless otherwise ordered by the court, the amount of a creditor's claim listed in its proof of claim controls over any contrary amounts listed in Parts 3, 4 or 5 of the Plan.

(3) Post-petition contractual payments under § 1322(b)(5) and adequate protection payments under § 1326(a)(1)(B),(C) shall be disbursed to the creditors by the Debtor directly. All other disbursements to creditors shall be made by the Trustee.

(4) If Debtor is successful in obtaining a recovery in a personal injury or other litigation in which Debtor is the plaintiff, before the completion of plan payments, any such recovery in excess of any applicable exemption will be paid to the Trustee as a special Plan payment to the extent necessary to pay priority and general unsecured creditors, or as agreed by the Debtor and the Trustee and approved by the court.

§ 7(b) Affirmative Duties on Holders of Claims secured by a Security Interest in Debtor's Principal Residence

(1) Apply the payments received from the Trustee on the pre-petition arrearage, if any, only to such arrearage.

(2) Apply the post-petition monthly mortgage payments made by the Debtor to the post-petition mortgage obligations as provided for by the terms of the underlying mortgage note.

(3) Treat the pre-petition arrearage as contractually current upon confirmation for the Plan for the sole purpose of precluding the imposition of late payment charges or other default-related fees and services based on the pre-petition default or default(s). Late charges may be assessed on post-petition payments as provided by the terms of the mortgage and note.

(4) If a secured creditor with a security interest in the Debtor's property sent regular statements to the Debtor pre-petition, and the Debtor provides for payments of that claim directly to the creditor in the Plan, the holder of the claims shall resume sending customary monthly statements.

(5) If a secured creditor with a security interest in the Debtor's property provided the Debtor with coupon books for payments prior to the filing of the petition, upon request, the creditor shall forward post-petition coupon book(s) to the Debtor after this case has been filed.

(6) **Debtor waives any violation of stay claim arising from the sending of statements and coupon books as set forth above.**

§ 7(c) Sale of Real Property

☐ **None.** If "None" is checked, the rest of § 7(c) need not be completed.

☒ (1) Closing for the sale of 527 W. Chestnut S., Lancaster PA (the "Real Property") shall be completed within 13 months of the commencement of this bankruptcy case (the "Sale Deadline"). Unless otherwise agreed by the parties or provided by the Court, each allowed claim secured by the Real Property will be paid in full under §4(b)(1) of the Plan at the closing ("Closing Date").

(2) The Real Property will be marketed for sale in the following manner and on the following terms:

If Debtor is unable to acquire a modification or refinancing of the present loan, Debtor intends to list the property for sale at the end of a 12 month period from the date of filing of this plan.

(3) Confirmation of this Plan shall constitute an order authorizing the Debtor to pay at settlement all customary closing expenses and all liens and encumbrances, including all § 4(b) claims, as may be necessary to convey good and marketable title to the purchaser. However, nothing in this Plan shall preclude the Debtor from seeking court approval of the sale of the property free and clear of liens and encumbrances pursuant to 11 U.S.C. §363(f), either prior to or after confirmation of the Plan, if, in the Debtor's judgment, such approval is necessary or in order to convey insurable title or is otherwise reasonably necessary under the circumstances to implement this Plan.

(4) Debtor shall provide the Trustee with a copy of the closing settlement sheet within 24 hours of the Closing Date.

(5) In the event that a sale of the Real Property has not been consummated by the expiration of the Sale Deadline:

Debtor will amend this plan as necessary to address such issues, or lender may seek relief from the Automatic Stay.

§ 7(d) Loan Modification

☐ **None.** If "None" is checked, the rest of § 7(d) need not be completed.

(1) Debtor shall pursue a loan modification directly with Deutsche Bank or its successor in interest or its current servicer ("Mortgage Lender"), in an effort to bring the loan current and resolve the secured arrearage claim.

(2) During the modification application process, Debtor shall make adequate protection payments directly to Mortgage Lender in the amount of \$0.00 per month, which represents _____ (***describe basis of adequate protection payment***). Debtor shall remit the adequate protection payments directly to the Mortgage Lender.

(3) If the modification is not approved by 12/12/19 (date), Debtor shall either (A) file an amended Plan to otherwise provide for the allowed claim of the Mortgage Lender; or (B) Mortgage Lender may seek relief from the automatic stay with regard to the collateral and Debtor will not oppose it.

Part 8: Order of Distribution

The order of distribution of Plan payments will be as follows:

- Level 1:** Trustee Commissions*
- Level 2:** Domestic Support Obligations
- Level 3:** Adequate Protection Payments
- Level 4:** Debtor's attorney's fees
- Level 5:** Priority claims, pro rata
- Level 6:** Secured claims, pro rata
- Level 7:** Specially classified unsecured claims
- Level 8:** General unsecured claims
- Level 9:** Untimely filed, allowed general unsecured claims

****Percentage fees payable to the standing trustee will be paid at the rate fixed by the United States Trustee not to exceed ten (10) percent.***

Part 9: Non Standard or Additional Plan Provisions

☒ **None.** If "None" is checked, the rest of § 9 need not be completed.

☐ Add Non-standard provisions

☐ Continuation sheet attached

Part 10: Signatures

Under Bankruptcy Rule 3015(c), nonstandard or additional plan provisions are required to be set forth in Part 9 of the Plan. Such Plan provisions will be effective only if the applicable box in Part 1 of this Plan is checked. Any nonstandard or additional provisions set out other than in Part 9 of the Plan are VOID. By signing below, attorney for Debtor(s) or unrepresented Debtor(s) certifies that this Plan contains no nonstandard or additional provisions other than those in Part 9 of the Plan.

Date: 12/12/2018

s/Shawn J. Lau, Esq.

Attorney for Debtor(s)

If Debtor(s) are unrepresented, they must sign below.

Date: _____

Debtor

Date: _____

Joint Debtor